BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
BLAINE S. AND BARBARA G. BUTLER)

For Appellants: Blaine S. Butler,
in pro. per.

For Respondent: Jon Jensen
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Blaine S. and Barbara G. Butler against proposed assessments of additional personal income tax in the amounts of $2,380.04, $2,346.19 and $2,499.47 for the years 1977, 1978 and 1979, respectively.

Appellants are residents of the State of Utah and filed nonresident California income tax returns during the years at issue. Appellant-husband is a practicing attorney whose principal office is in Los Angeles, California. Appellant's California source income was 78 percent of their total income in 1977, and 100 percent thereof in each of 1978 and 1979.

During these years, appellant claimed various itemized deductions, including interest payments and property taxes paid on behalf of Utah real property, sales tax paid to Utah, and charitable contributions made to Utah charities. On their California returns for those years, appellants, as with their income, apportioned 78 percent of their total itemized deductions (including those noted above) in 1977, and 100 percent thereof in each of 1978 and 1979, to California. Upon audit, respondent determined that these itemized deductions had no connection with California source income, and, accordingly, disallowed their deduction and substituted standard deductions in appropriate amounts for each year. Appellants protested the resulting assessments and respondent's denial of that protest led to this appeal.

The sole issue to be decided is whether appellants have established that they are entitled to the claimed itemized deductions.

It is well established that the taxpayer has the burden of proving his entitlement to claimed deductions. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 13481 (1934); Appeal of James M. Denny, Cal. St. Bd. of Equal., May 17, 1962.) Moreover, as nonresidents, appellants must establish a connection between the claimed deductions and the income arising from a California source. (Rev. & Tax. Code, § 17301; Appeal of Louis and Ann Dulien, Cal. St. Bd. of Equal., July 26, 1978.)

Instead of attempting to establish such a connection with respect to the deductions, appellants apparently contend that respondent's action here results in unconstitutional discrimination against them. We believe that the adoption of Proposition 5 by the voters on June 6, 1978, adding section 3.5 to article III of the California Constitution precludes our determining that the statutory provisions involved here are unconstitutional or unenforceable. In brief, said section 3.5 of article III provides that an administrative agency has no power to declare a statute unconstitutional or

unenforceable unless an appellate court has made such a determination. Furthermore, this board has a well-established policy of abstention from deciding constitutional questions in appeals involving deficiency assessments. (Appeal of Ruben B. Salas, Cal. St. Bd. of Equal., Sept. 27, 1978; Appeal of Iris E. Clark, Cal. St. Bd. of Equal., March 8, 1976.) This policy is based upon the absence of specific statutory authority which would allow the Franchise Tax Board to obtain judicial review of an adverse decision in a case of this type, and our belief that such review should be available for questions of constitutional importance. This policy properly applies to this appeal. It should be noted, however, that the United States Supreme Court has concluded that it is constitutionally permissible for a state to limit a nonresident's deductions to those connected with income from sources within the taxing state. (Shaffer v. Carter, 252 U.S. 37, 57 [64 L.Ed. 445] (1920); Travis v. Yale & Towne Manufacturing Co., 252 U.S. 60, 75 [64 L.Ed. 460] (1920).)

In any event, nothing in the record establishes that the subject deductions were incurred in connection with California source income. Absent any significant evidence in support of the claimed deductions, respondent's disallowance must be affirmed. (Appeal of Louis and Ann Dulien, supra; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.)

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Blaine S. and Barbara G. Butler against proposed assessments of additional personal income tax in the amounts of $2,380.04, $2,346.19 and $2,499.47 for the years 1977, 1978 and 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of December , 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett , Chairman

Conway H. Collis , Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins , Member

, Member